IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1218 OF 2004

Smt.Meenaben Bhikabhai Mahhiyavanshi & Ors....Appellants

Vs.

Ganeshbhai Chhanabhai Mahiyavanshi & Ors. ...Respondents

Mr.G.S.Godbole i/b Mr.Yatin R.Shah for the Appellants
Mr.Prakash Lad for Respondent Nos.1 to 3.

CORAM: A.S.OKA,J.
DATE : FEBRUARY 17, 2005.

P.C.:

1. Heard the Counsel appearing for the rival parties.

Following substantial question of law arises :

. "Whether the Appellate Court was right in deleting the issue relating to ownership of the Appellants framed by the Trial Court and consequently setting aside the finding recorded on the said issue without recording any reasons?

2. By consent taken up for hearing forthwith.

3. Shri Godbole appearing for the Appellants submitted that when the issue of title was framed by the Trial Court, the Appellate Court could not have deleted the issue at the time of writing the Judgment without notice to the parties and without assigning any reasons.

4. Confronted with this submission, Shri Lad appearing for

the Respondents fairly stated that the Judgment and Decree of the Appellate Court may be quashed and set aside and the Appeal be remanded to the District Court for hearing the same afresh.

5. In view of this submission, I pass the following order :

i) Impugned Judgment and Decree dated 13th July 2004 is quashed and set aside and Regular Civil Appeal No.2 of 2001 is remanded to the Appellate Court for hearing the same afresh.

ii) Parties will appear before the District Judge on 7th March 2005 for fixing the schedule of hearing.

iii) The Appellate Court will hear and decide the Appeal as expeditiously as possible and preferably on or before 31st August 2005.

iv) Second Appeal is disposed of in above terms. No order as to costs.

v) All contentions on merit are kept open. It is made clear that the Appeal will be heard afresh on all the points involved in the Appeal.

JUDGE.